

*Guidance for preparing*  
**Plans and Specifications**  
*for*  
Clean Water State Revolving Fund Projects

The Clean Water State Revolving Fund (CWSRF) program is a state program that is receiving Federal assistance only during the "start-up" phase. Federal procurement regulations do not apply to SRF projects; however, State Revolving Fund projects will have to meet the following Federal requirements:

1. Presidential Executive Orders 11625, 12138, and 12432, Women's and Minority Business Enterprise.
2. Presidential Executive Order 12549, Debarment and Suspension.
3. Presidential Executive Order 11246, Equal Employment Opportunity.

In addition to the above, projects that will receive all or part of their funding with funds from the American Recovery and Reinvestment Act of 2009 (ARRA) will have to meet the following requirements in that act:

4. Davis-Bacon and Related Acts.
5. Buy American provision of the ARRA.

Items 1 and 2 above will apply to all projects receiving loan assistance from funds provided by the Environmental Protection Agency in the capitalization grants awarded to the State. Once all funds provided in the capitalization grants have been used, these requirements will not longer apply. Item 3 above will apply to the SRF program permanently. Specific guidance for Items 4 and 5 above are included as Attachment 1 to this document.

A requirement to comply with these Presidential Executive Orders has been included with the required clauses discussed below.

The following forms are necessary for conformance with the above requirements and should be included in the bid documents. Copies of these forms are enclosed for your use.

RF-200	Prospective Prime Contractor's (Bidder) Statement About Six Affirmative Action Steps
RF-211	Prospective Prime Contractor's (Bidder) Statement About Equal Opportunity Clause
RF-212	Prospective Prime Contractor's (Bidder) Certification of Nonsegregated Facilities
RF-245	Utilization of Women/minority Contractor Information Sheet
RF-248	Letter of Intent
RF-373	MBE/WBE Certification
5700-49	(EPA Form) Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The above forms must be completed and signed by the successful bidder except for form RF-373 which must

be signed by the authorized representative of the loan recipient. It is a good idea to include these forms in the special/supplementary conditions with instructions clarifying that the successful bidder will be required to complete and sign all forms except RF-373.

It is a Federal requirement that all procurement made with Federal funds utilize six (6) affirmative action steps to utilize small business enterprises (SBE's), minority business enterprises (MBE's), women's business enterprises (WBE's), and small businesses in rural areas (SBRA's) in the areas of construction, services, equipment, and supplies. In order to advise prospective bidders of these requirements, the attached EXPLANATION OF AFFIRMATIVE ACTION STEPS must be included verbatim in the information/instruction for bidders section of the contract documents. The documentation requested from the successful bidder should be included with the bid document package submitted to DEQ.

It is a requirement of the SRF Loan Program that surety companies providing bonding to contractors be included in the most current version of the U.S. Treasury Department's listing of approved sureties, Circular 570. The latest version of this circular can be found on the Internet at [www.fms.treas.gov/index.html](http://www.fms.treas.gov/index.html) under "Publications." Surety companies that are utilized also must be currently licensed to do business in the state of Louisiana. These requirements should be noted in the section of the contract documents that discusses bonding requirements.

There are a number of "cross cutting" Federal laws that apply to the SRF Program. The attached REQUIRED CLAUSES FOR CONTRACT DOCUMENTS must be included verbatim in the contract documents (special/supplementary conditions) to satisfy these laws.

Some portions of the project that do not meet Federal eligibility requirements may not be funded through the SRF. If any portions of the project are not eligible, these should be listed separately and identified as ineligible in the bid proposal.

The DEQ Project Engineer will review the plans and specifications to ensure the following:

1. That the SRF Program requirements discussed above have been met.
2. That adequate information is given to bid and construct the project.
3. That the design is in accordance with the approved Facility Plan.
4. That the facilities are properly designed according to accepted design criteria and will be capable of handling the expected hydraulic and organic loadings and (for treatment works) of meeting the expected effluent limits.

The design engineer must take into account the need for reliability in the operation of any treatment works that he or she designs. An important aspect of reliability is the need for multiple units and back up units for the major unit operations in a treatment work. Please refer to our *Guidance on Component Reliability Criteria for State Revolving Fund Loan Projects*.

In order to enable the DEQ Project Engineer to adequately review the design of treatment works and collection/transportation systems, it is requested that the consulting engineer submit a design summary with the plans and specifications. The design summary should contain the relevant data, design criteria, assumptions, methods, and sample calculations used to design the major components of treatment and/or collection/transportation facilities. Normally, a design summary is not required for a sewer rehabilitation project.

Federal procurement regulations for EPA funded projects (40 CFR Part 31) will not apply to SRF projects. Since the Federal procurement regulations do not apply, SRF projects must be bid and contracts awarded in accordance with any applicable State laws and regulations, and any parish or local ordinances. Plans and specifications for SRF projects will be reviewed to see that the State, instead of Federal, requirements have been used for the bidding and award process; however, our staff are not legal experts and approval of plans and specifications does not guarantee that the project is in compliance with all State and local requirements.

The CWSRF staff does review bid documents and will issue a letter to the recipient authorizing a contract award, so bidding schedules should be planned to allow time for this activity. We do not plan to take an active role in the resolution of any bid protests, except insofar as any Federal requirements of the SRF program may be involved.

The SRF program does allow loans to include reimbursement for work already performed. It is allowable for the recipient to receive bids and to award construction contracts before the loan agreement is signed, however, no payments can be made until after the loan agreement is signed and there may be some limitations on making large payments immediately after the loan agreement is signed. Recipients may also proceed to construction prior to approval of facilities plans, plans and specifications, addenda, and bid documents; however, the recipient must accept the risk of loss of financial assistance for any elements of the project that are not approvable. **Reimbursements for construction contracts already bid cannot be made unless the provisions specified in this guidance were included in the contract documents that were bid.**

While we strongly discourage recipients from taking any action based on documents that have not been approved, we recognize that some recipients may have compliance schedules that do not allow time for the normal review and approval process. We will attempt to assist these recipients as much as possible but we cannot guarantee that financial assistance will be available until all program requirements have been met.

## REQUIRED CLAUSES FOR CONTRACT DOCUMENTS

### I. EQUAL OPPORTUNITY CLAUSE: 40 CFR PART 8.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this equal opportunity clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract, or understanding, a notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under this equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the equal opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## II. HISTORICAL PRESERVATION CLAUSE: 36 CFR PART 800.

The contractor agrees that, should evidence of historical or archeological sites be discovered during construction, all work in the area will cease immediately and the owner will be informed of the discovery. The owner will, in turn, promptly notify the Municipal Facilities Division of the Louisiana Department of Environmental Quality (DEQ).

After consulting with the appropriate State and Federal agencies, the DEQ will advise the owner of any protective measures that may be required.

## III. ENDANGERED SPECIES CLAUSE: ENDANGERED SPECIES ACT OF 1973, AS AMENDED

The contractor agrees that, should plants or animals belonging to either endangered or threatened species be discovered in the area of construction or adjacent areas, all work in that area will cease immediately, and the owner will be informed of the discovery. The owner will, in turn, promptly notify the Municipal Division of the Louisiana Department of Environmental Quality (DEQ).

After consulting with the appropriate State and Federal agencies, the DEQ will advise the owner of any protective measures that may be required.

## IV. PRESIDENTIAL EXECUTIVE ORDERS

The contractor is required to comply with the following Presidential Executive Orders:

- (1) 11625, 12138, and 12434 - Women's and Minority Business Enterprise;
- (2) 12549 - Debarment and Suspension
- (3) 11246 - Equal Employment Opportunity.

## **EXPLANATION OF AFFIRMATIVE ACTION STEPS**

It is a Federal requirement that all procurement made with Federal funds utilize six (6) affirmative action steps to utilize small business enterprises (SBE's), minority business enterprises (MBE's), women's business enterprises (WBE's), and small businesses in rural areas (SBRA's) in the areas of construction, services, equipment, and supplies. These six steps are as follows:

1. Include MBE's, WBE's, SBE's, and SBRA's on solicitation lists;
2. Assure that MBE's, WBE's, SBE's, and SBRA's, once they are identified, are solicited whenever they are potential sources;
3. When economically feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE's, WBE's, SBE's, and SBRA's;
4. Where feasible, establish delivery schedules which encourage participation by MBE's, WBE's, SBE's, and SBRA's;
5. Using the services and assistance of the U.S Department of Commerce's Minority Business Development Agency (MBDA) and the Small Business Administration (SBA); and
6. Requiring the prime contractor to take the affirmative steps outlined here. If the successful bidder does not plan to award subcontracts, these steps should still be taken in procuring equipment and supplies.

Step number five (5) is not mandatory if other sources to identify MBE's, WBE's, SBE's, and SBRA's are utilized. However, the use of these resources is encouraged. There are several online databases that list qualifying firms, some of which may be identified as disadvantaged business enterprises (DBE) rather than MBE, WBE, SBE, or SBRA firms.

One of these databases is the PRO-Net database which can be accessed by typing [www.sba.gov](http://www.sba.gov) to reach the SBA WebPage. The PRO-Net database allows you to conduct a search for firms based on a number of criteria such as locality, SIC codes, bonding capability, etc. This database also allows you to locate firms that have been certified through the 8(a) program which certifies that the company has at least 2 years experience, has adequate financing and bonding to perform, and has references from previous jobs. If you do not have Internet access you can contact the New Orleans office of the SBA at (504) 589-2847

The MBDA also maintains a database which can be accessed by typing [www.mbda.gov](http://www.mbda.gov) to reach their opportunity database. Information you submit to this database about the job you have for MBE/WBE participation will be compared with information in the Phoenix database of minority companies. When a match is made, the eligible minority companies will receive a copy of your opportunity by email and/or fax and you will receive (via email or fax) a list of the minority companies to which your opportunity has been referred. The phone number for the MBDA is (214) 767-8001.

The Louisiana Department of Transportation and Development (DOTD) also has an online list of DBE firms that have been certified by DOTD. Typing [www.dotd.state.la.us/cgi-](http://www.dotd.state.la.us/cgi-)

[bin/construction.cgi](http://bin/construction.cgi) will take you to the site where you can select the most current list of DBE firms. The phone number for DOTD is (225) 379-1382.

The successful bidder must provide documentation to demonstrate that the affirmative action steps were pursued. In addition to the use of forms RF-245 and RF 248, documentation might include records of telephone calls, records of utilization of the MBDA and SBA Web sites, and relevant correspondence. Where MBE's, WBE's, SBE's, and/or SBRA's are contacted but not utilized, an explanation as to why each one contacted was not utilized should be provided.

## Attachment 1

### Projects that receive funding through the American Recovery and Reinvestment Act of 2009

- Davis-Bacon and Related Acts

The bidding documents must include the current U.S. Department of Labor wage rates for the project. Wage rates may be downloaded from <http://www.wdol.gov/> and clicking on “Selecting DBA WDs”. Select the appropriate Wage Determination for your project and include it in the specifications when you advertise for bids. Recheck the Wage Determination ten days before bid opening, and if it has been revised, the revised version must be issued to bidders as an addendum.

The following text must be included in the bidding documents:

[Code of Federal Regulations]  
[Title 29 Volume 1]  
[Revised as of July 1, 2008]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 29CFR5.5]

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#### TITLE 29--LABOR

##### PART 5 LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION

###### Subpart A - Davis-Bacon and Related Acts Provisions and Procedures

###### Sec. 5.5 Contract provisions and related matters.

(a) The Louisiana Department of Environmental Quality requires the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any



contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Louisiana Department of Environmental Quality may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the

apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Louisiana Department of Environmental Quality if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Louisiana Department of Environmental Quality. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Sec. 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under Sec. 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Louisiana Department of Environmental Quality or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Louisiana Department of Environmental Quality may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they

performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage

determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Louisiana Department of Environmental Quality may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Secretary of the Louisiana Department of Environmental Quality shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Secretary of the Louisiana Department of Environmental Quality shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Secretary of the Louisiana Department of Environmental Quality shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Louisiana Department of Environmental Quality and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

- Buy American

Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA) requires that all of the iron, steel, and manufactured goods used in a project funded with funds made available through the ARRA must be produced in the United States.

Waivers to this requirement may be allowed if the Administrator of the U.S. Environmental Protection Agency finds that:

1. applying this requirement would be inconsistent with the public interest;
2. iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Recipients of funds made available by the ARRA may request a waiver if it is believed that any of the three criteria listed above are applicable. Requests for waivers should be sent directly to [region6waiver@epa.gov](mailto:region6waiver@epa.gov).

The above information must be included in the bidding documents. Consulting engineers are encouraged to hold pre-bid conferences with prospective bidders to identify any concerns with compliance with the Buy American provision and to alert the recipient to the need for a waiver prior to bid. If a waiver is necessary, provide all of the applicable information from the tables on the next two pages.

Waiver Items
<p>General – for waivers based on Cost or Availability</p> <ul style="list-style-type: none"> <li>• Waiver is requested on the basis of either Cost and/or Availability. <i>(Note: questions related to the public interest waiver criteria should be directed to the Regional point of contact)</i></li> <li>• Waiver request includes the following information: <ul style="list-style-type: none"> <li>– Description of the foreign and domestic construction materials</li> <li>– Unit of measure</li> <li>– Quantity</li> <li>– Price</li> <li>– Time of delivery or availability</li> <li>– Location of the construction project</li> <li>– Name and address of the proposed supplier</li> <li>– A detailed justification for the use of foreign construction materials</li> </ul> </li> <li>• Waiver request was submitted according to the State’s instructions to SRF assistance recipients</li> <li>• Assistance recipient made a good faith effort to solicit bids for domestic construction materials/manufactured goods, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor</li> </ul>
<p>For waivers based on Cost</p> <ul style="list-style-type: none"> <li>• Waiver request includes the following information: <ul style="list-style-type: none"> <li>– Price Comparison Worksheet shown in Table 1, completed by the prime contractor</li> <li>– Relevant excerpts from the bid documents used by the prime contractor to complete the Price Comparison Worksheet</li> <li>– Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers</li> </ul> </li> </ul>
<p>For waivers based on Availability</p> <ul style="list-style-type: none"> <li>• Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: <ul style="list-style-type: none"> <li>– Bid documents or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials</li> <li>– Documentation of the assistance recipient’s efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers.</li> <li>– Project schedule</li> <li>– Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials</li> </ul> </li> <li>• Waiver request includes a statement from the prime contractor confirming the non-availability of the domestic construction materials for which the waiver is sought</li> <li>• Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?</li> </ul>



**Table 1: Foreign and Domestic Construction Materials Price Comparison Worksheet**

Instructions: To be completed by the prime contractor. In column a), enter all construction materials and manufactured goods required to build the project as designed. In column b) enter the cost estimate for each component as supplied by domestic sources. In column c) enter the cost estimate for each component for which waivers are requested, as supplied by foreign sources.

(a) Construction Material	Unit of Measure	Quantity	(b) Price – Domestic Material*	(c) Price – Foreign Material*
			(d) Total Domestic Project Cost:	(e) Total Foreign Project Cost:

\*Include all delivery costs to the construction site